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Case No. 99-1964

In The Supreme Court Of The United States

TIMOTHY BOOTH

Petitioner

v.

C. O. CHURNER, *et al.*

Respondents

BRIEF OF 50 STATES AND TERRITORIES AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENTS

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QUESTION PRESENTED

Whether 42 U.S.C. § 1997(e), as amended by the Prison Litigation Reform Act, requires a prisoner to exhaust administrative remedies before bringing a federal action, where the prisoner seeks only monetary damages in the lawsuit and the administrative scheme does not provide for an award of such damages.

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STATEMENT OF AMICI INTEREST

The 50 *amici* States and Territories write because the Petitioner's analysis has the potential to further complicate one of the most difficult tasks consigned to state government—the operation of safe and well-ordered prisons. That analysis, if accepted, would drastically undercut the utility of inmate grievance systems, one of the key tools available to States in fulfilling that legal, and humane, duty. Moreover, it would do so at a time when States need all the help they can get to respond to an increasingly complex correctional environment.

State governments operate 1,328 prisons. Criminal Justice Institute, Inc., *The Corrections Yearbook-1999*, 66-67 (1999). The difficulties in doing so "are complex and intractable . . . requir[ing] expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of" corrections professionals. *Procunier v. Martinez*, 416 U.S. 396, 405 (1974). "The relationship of state prisoners and the state officers who supervise their confinement is [] intimate," with "prisoners eating, sleeping, dressing, washing and working under the watchful eye of the state." *Prieser v. Rodriguez*, 411 U.S. 475, 492 (1973). State correctional agencies are responsible for a dazzling array of operations, being forced into the role of landlord, employer, tailor, doctor, banker, educator and cook. The potential for mistake, and conflict, is both pervasive and unavoidable, and corrections officials need every tool at their disposal to limit those problems.

Inmate grievance systems are one of the States' most important tools in prison management. As detailed below, those remedies serve as "early warning systems" for problems big or small; they highlight operational problems to be addressed before serious harm occurs. They also provide

far more efficient alternatives to litigation for resolving disputes, allowing disputing parties to focus on solutions rather than litigation tactics.

Given those functions, it is not surprising that the States have devoted significant effort to developing effective grievance systems. Almost every state has adopted some sort of system that allows prisoners to voice complaints generally. Others have supplemented those with more specific remedies addressing frequently litigated disputes such as staff misconduct, disciplinary matters, access to publications, and, as will become increasingly important following the enactment of the Religious Land Use and Institutionalized Persons Act of 2000, P.L.106-274, religious accommodations. *See, e.g.*, Ohio Admin. Code §§ 5120-9-02 and 03 (use of force); 5120-9-06 through 09 (disciplinary matters); 5120-9-19 (publications); ODRC policy 309-01 (religion). Further, the States make systematic efforts to review inmate grievances in order to discern areas where improvements are needed. *See, e.g.*, Ohio Admin. Code §§ 5120-9-30 (D)(5) through (7); 5120-9-31(I) and (L); *FY 2000 Annual Report of the Inmate Grievance Procedure* (Ohio Department of Rehabilitation and Correction 2000) (lodged with the Court); *Inmate Grievance Program Semiannual Report-January-June 2000* (New York Department of Correctional Services 2000) (lodged with the Court); *Offender Grievance Program Annual Report 1998* (Washington Department of Corrections 1999). Broad coverage has long been a key design principle for such systems, for, as the General Accounting Office recognized more than two decades ago, a successful grievance system "must be applicable to as broad a range of issues as possible." *Grievance Mechanisms in State Correctional Institutions and Large City Jails*, 2 (General Accounting Office, June 17, 1977).

Unfortunately, Petitioner's view will produce exactly the opposite result and undermine the States' very significant efforts in this area. It would allow prisoners to ignore administrative remedies whenever they seek damages that are not available. That reading of § 1997e(a) creates an exception that effectively abrogates the statute's general rule because almost all prisoners seek damages, and very few States have grievance systems that authorize damages for anything other than the loss of personal property. That approach would have palpable effects inside prison walls:

> *[I]f a prisoner may circumvent state agencies by bringing a section 1983 action, corrections personnel may not become aware of, and hence may not be able to rectify, administrative deficiencies until federal litigation is commenced* . . . Rather than have state policymakers determine the appropriate reform, the federal judiciary interposes its own judgment.
>
> * * *
>
> *Although this might benefit the individual prisoner bringing the action, problems affecting the entire prison population may remain unresolved.*

S. Russo, *State Prisoners and the Exhaustion of Administrative Remedies: Section 1983 Jurisdiction and the Availability of Adequate State Remedies*, 7 Seton Hall L. Rev. 366, 392 and n.148 (1976) (emphasis added). Thus, the amici States submit this brief to protect the integrity of these early warning systems, for the benefit of the States and, ultimately, for the benefit of the inmates themselves.

SUMMARY OF ARGUMENT

Exhaustion here is a matter of Congressional intent, because when "Congress specifically mandates, exhaustion is required." *Coit Independent Joint Venture v. FSLIC*, 489 U.S. 561, 579 (1989). 42 U.S.C. § 1997e(a) broadly mandates that "[n]o action shall be brought with respect to prison conditions...until such administrative remedies as are available are exhausted," without regard to the type of relief sought. Petitioner Booth claims that prisoners should be allowed to bypass exhaustion if an administrative forum will not satisfy individual prisoners' demands for damages, and he claims that dictionary definitions of "available" and "remedy" support his view. But Petitioner's allegedly "plain" reading is not truly an objective one, as it is premised upon reading the terms solely from the inmate's *subjective* viewpoint. Petitioner thus converts the term "available" into "available in the way I like."

By fixating on the subjective desires of individual prisoners, Petitioner ignores the fact that intra-prison dispute resolution systems have been objectively shown to be "available" to help States detect and "remedy" deficiencies in their prisons, and that they do so without regard to the provision of damages. He also overlooks the fact that grievance systems are "available" to provide far more effective "remedies" than litigation for resolving the disputes that underlie prisoner lawsuits, and that they serve that function independent of damage awards. Thus, the plain language, when read from an overall viewpoint of the prisoner-plaintiff, the warden and staff, the inmate population, and any other stakeholders, shows that the Third Circuit's construction of § 1997e(a) fits easily within dictionary definitions and should be affirmed.

Almost as importantly, the Petitioner overlooks strong evidence in the legislative history of the Prison Litigation Reform Act ("PLRA") that Congress did not aim to expedite damage actions when it revised § 1997e(a). Congress was far more concerned with making "available" to the States "remedies" to limit the unreasonable operational constraints and costs that resulted from elevating prisoner-plaintiffs' often supra-constitutional desires over legitimate penological concerns. Indeed, other PLRA provisions expressly discouraged damages in prisoner cases, undercutting Petitioner's insistence that Congress intended to excuse exhaustion if such relief is not available. Those broader indicia of Congress's intent expose the fallacy of Petitioner's narrow focus on the subjective pecuniary interests of particular plaintiffs.

In short, the plain language of § 1997e(a) objectively mandates exhaustion, without reference to an individual prisoner's subjective desires, because grievance systems are "available" to "remedy" substandard prison conditions, and they do so more effectively than litigation, without regard to their ability to provide damages. The Third Circuit's thorough analysis "gave appropriate deference to Congress's power to prescribe the basic remedial scheme under which a claim may be heard in a federal court," *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), and it should be affirmed.

ARGUMENT

I. The PLRA's Plain Language Mandates Exhaustion of All Available Remedies, Regardless of the Remedy's "Adequacy" or a Prisoner's Subjective Preferences.

Unlike many other exhaustion requirements, which are often judge-made prudential doctrines, the requirement at issue here was dictated by Congress. Because Congress has mandated exhaustion, the requirement must be enforced. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Patsy v. Florida Bd. of Regents*, 457 U.S. 496, 502 n.4 (1982); *Weinberger v. Salfi*, 422 U.S. 749, 766-767 (1975); *Coit Independence Joint Venture v. F.S.L.I.C.*, 489 U.S. 561, 580 (1989). And in this case, Congress not only adopted an exhaustion statute, but it went back and amended an existing one to make it both all-inclusive and compulsory.

The PLRA converted an optional-exhaustion provision into a mandatory one, and it took away a judicial inquiry into the "adequacy" of an administrative remedy. The previous version simply allowed courts to require exhaustion if "appropriate," and even then only if the remedy was "plain, speedy, and effective." Now, the plain text of § 1997e(a) does not expressly condition exhaustion on judicial review of a remedy's adequacy—*i.e.*, whether a remedy is "plain, speedy, and effective"—so it seems unlikely that Congress meant nevertheless to preserve such an inquiry, let alone loosen it so that exhaustion turns not on some objective adequacy, but on a prisoner's personal choice to name the type of relief he desires. Yet Petitioner's view would add both conditions, as his reading of the terms "remedy" and "available" would not only revive the expressly-deleted adequacy inquiry, which would be bad enough, but it goes one step further. His view opens the door to allowing a

prisoner to decide for himself what relief he would like, and to forgo an otherwise available remedy in favor of what Petitioner calls "the remedy the prisoner seeks." *See* Petitioner's Brief ("Pet. Br.") at 13.

That attempt to implant qualifications where none exist fails under its own terms. As experience gained over three decades has shown, intra-prison dispute resolution mechanisms are indeed "available" to "remedy" deficient prison conditions, and they do so more effectively than lawsuits, regardless of whether they provide damages.

A. Grievance Systems are "Available" to "Remedy" Deficient Prison Conditions Regardless of Whether They Satisfy The Grievant's Personal Demands.

All parties and amici agree, of course, that a prisoner must exhaust an "available remedy," as that is what the statute plainly says. We part ways on defining what constitutes a "remedy" and how to determine if one is "available."

The amici States submit that a remedy is available if it addresses the problem that a prisoner raises. It may not address it to his full satisfaction, or not to his satisfaction at all. In the unique context of prisons, however, a situation may be "addressed" in the broader sense—*e.g.*, conditions may be changed for the populace; a guard may be disciplined or fired—even if it admittedly gives little solace to the grieving inmate. Better still, many inmates who initially "demand" damages may decide that they are satisfied once they actually see operational changes in action. Congress knew that prison-conditions complaints reflect ongoing institutional concerns, and that every inmate's complaint may, if legitimate, be a symptom of a larger problem. It is in

this context that it required prisoners to invoke "available remedies," and it is in this context that the plain words make sense. In essence, the terms "available" and "remedy" should be defined objectively, not solely from the prisoner-plaintiff's subjective viewpoint.

By contrast, Petitioner's view of "availability," although couched in terms of "plain language," is built on a far narrower view of the problem needing to be addressed, one limited to the prisoner's short-term view of "what's in it for me?" Outside the prison walls, plaintiffs sometimes wish to "change the system," but most plaintiffs simply want what they want—for themselves. But prisons are different. Every challenge raised is, on some level, a challenge to the system, and calls out for an institutional response. To an individual prisoner, an allegation of excessive force by a guard may be a past event, calling for compensation only. But to the State, and to other inmates under that guard's supervision, there is still a problem to remedy: the guard, if guilty as charged, must be disciplined, re-trained, or fired. But at every turn, Petitioner's argument is explicitly or implicitly premised on ignoring that overarching concern in favor of his own particular pecuniary interests. To be sure, the prisoner is the complainant, and his view does matter. But restoring the broader context of other viewpoints, those of the individual claimant and other affected persons alike, shows why Congress's words must encompass the broader reading of "available remedy."

For example, Petitioner claims that dictionary definitions of "available" and "remedy" require the conclusion that remedies are not available if they do not provide the damages that a prisoner seeks. Pet. Br. at 15-16, citing *Webster's Third New International Dictionary* (3rd ed. 1993). *Webster's* defines a " remedy" as a "means to ... prevent or redress [ ] a wrong," *id.* at 1920, and "available"

as "having sufficient power or force to achieve an end ... capable of use for accomplishment of a purpose," *id.* at 150. But reading these definitions simply begs the question: what "wrong" must be righted; what "purpose" should be "accomplished?" If the purpose of grievance systems is writing checks to inmates, then Petitioner has a point. But his argument collapses if we simply recognize that the purpose to be accomplished, from both a prisoner's and the States' perspective, is achieving better prison conditions. This recognition is not a gloss on the text, but is simply a common-sense way of directly reading that text and one that is far more consistent with the overall thrust of the PLRA, as discussed below. Approached in this way, the better reading of the plain text is that a remedy is available when it addresses the problem in some way.

Even if both views were equally valid textual readings, Petitioner's subjective view must be rejected, as a prisoner's view of preferred remedies could almost always evade the exhaustion requirement. An inmate could evade exhaustion by demanding compensatory damages, punitive damages, or whatever else is not on the administrative menu. Even in the purely injunctive context, an inmate could insist on a particular policy change, even if challenged policy is set by statute, so that the administrative body cannot specifically "provide the remedy that the prisoner seeks," *see* Pet. Br. at 13, even if an equally serviceable remedy is undoubtedly available. Indeed, even if a grievance system pays money damages, a prisoner could conceivably insist that he does not want the State's money, but that he instead seeks to force a particular individual defendant to pay up. Such absurd results are not steps on a slippery slope, we submit, but are merely applications of a purely subjective "what does the inmate seek?" approach.

In contrast, the States' approach starts as well with the dictionary definition of available, and we then look to empirical evidence to see if prison grievance systems "hav[e] sufficient power to achieve an end" (*see* above at 8, citing Webster's)—with that end being resolution of prison problems. That empirical research, along with current practice, confirms that administrative remedies do achieve that end, even though very few provide for damages. Correctional managers use those systems as early warning devices "periodically reviewing the grievances to identify patterns, to anticipate problems *and to formulate policies and procedures that respond to them.*" S. Brakel, *Administrative Justice in the Penitentiary: A Report on Inmate Grievance Procedures*, 1982 Am. Bar Found. Res. J. 111, 129 (1982)(emphasis added).

Extensive literature on the topic is consistent in noting that such systems "have been found useful as a management tool" and that "by attentive monitoring of the complaint process, wardens and commissioners can discern patterns of inmate discontent that may warrant activities *to prevent development of more serious problems.*" G. Cole and J. Silbert, *Alternative Dispute-Resolution Mechanisms for Prisoner Grievances*, 9 Justice System Journal 306, 315 (1984) (emphasis added). *Accord*, Denenberg & Denenberg, *Prison Grievance Procedures*, Corrections Magazine, January/February 1975 at 34, 36, 41, 51 (citing examples in the federal, Maryland and California prison systems); *Managers Need Comprehensive Systems for Assessing Effectiveness and Operation of Inmate Grievance Systems* (General Accounting Office, October 17, 1977) 2-3 (citing examples from the federal and New York systems). Indeed, that vital impetus for self-correction was a primary reason that administrators initially implemented grievance systems. V. McArthur, *Inmate Grievance Mechanisms: A Survey of*

209 American Prisons, 38 Fed. Probation 41, 44 (December 1974).

A typical example is found in the most recent review of New York's grievance system. That review identified problems with law library and inmate payroll operations and provided valuable feedback on the efficacy of solutions to previously identified problems in the delivery of medical care, mail handling, visiting procedures and the observance of therapeutic diets. *Inmate Grievance Programs: Semiannual Report January-June 2000* (New York Department of Correctional Services 2000) 11, 13, 14, 15, 27. Those results are not atypical, but are consistent with both the earliest research on inmate grievance systems and responses to an informal inquiry made within the last sixty days. A 1975 study noted that inmate grievance systems resulted in changes to mail, library, transfer, grooming standards, medical care and property policies. Denenberg & Denenberg, *supra*, at 34, 36-37, 51, 61-62. Studies in 1976 and 1977 identified grievance-driven changes to correspondence, vehicle safety, telephone access and vocational training policies. A. Breed, *Instituting California's Ward Grievance Procedure: An Inside Perspective*, 10 Loyola (L.A.) L.R. 113, 118-120 (1976); *Managers Need Comprehensive Systems for Assessing the Effectiveness and Operation of Inmate Grievance Mechanisms* (General Accounting Office, October 17, 1977) 2-3.

Inquiries made contemporaneously with this brief have revealed that operational practices continue to be changed in response to prisoners' grievances. Ohio, for example, has most recently followed that pattern by, among other things, making medical and dental care more quickly available, responding favorably to prisoners' requests for more effective countermeasures against contraband, and

reducing the amount of time inmates must spend in "lockdown" status, all in response to prisoner grievances. *See* Appendix.

Grievance systems serve another purpose as well: to provide a means to enforce even-handed application of existing policies. Most States have developed system-wide policies intended to minimize tension between "staff on the front line" and "prisoners hostile to the authoritarian structure of the prison environment." *Sandin v. Conner*, 515 U.S. 472, 482 (1995). Deviation from those standards can result in increased tension that is often difficult for top management to detect in this age of multi-facility prison systems. Inmate grievance systems are a key way of detecting, and dealing with, such potentially inflammatory deviations, a way that is far more effective than litigation. *Compare FY 2000 Annual Report of the Inmate Grievance Procedure* (Ohio Department of Rehabilitation and Correction, 2000) 5 (22.76% of use of force/inappropriate supervision grievances resolved in favor of inmate); G. Cole, R. Hanson, and J. Silbert, *Alternative Dispute Resolution Mechanisms for Prisoner Grievances* (National Institution of Corrections, U. S. Dept. of Justice 1984) 34 (26% success rate for prisoners' complaints about staff misconduct) with R. Hanson and H. Daley, *Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation* (Bureau of Justice Statistics, U. S. Dept. of Justice, 1995) 19, Table 4 (6% success rate in prisoner civil rights suits). Once again, that empirical research is consistent with operational experience. For example, New York has recently learned of, and corrected, deviations from existing policies through the monitoring of administrative complaints. *Inmate Grievance Program: Annual Report 1999*, (New York Dept. of Correctional Services, 1999) 22; *Inmate Grievance Programs: Semiannual Report January-June 2000*, *supra*, at 13.

In sum, inmate grievance systems are "available" to "remedy" deficiencies affecting many prisoners, regardless of whether they will satisfy any individual prisoner's desire for damages. Research and practical experience proves that they are effective "means to ... prevent or redress [ ] a wrong" and are "capable of use for accomplishment of" significant purposes," even if they do not provide damages to individual prisoner-plaintiffs.

B. Administrative Remedies Are "Available" to "Remedy" Disputes Far More Effectively Than Litigation.

Even for one complaining prisoner, a grievance system works to "accomplish" very "capabl[y]" another important "purpose," *Webster's Third New International Dictionary*, *supra*, at 150, namely, the efficient resolution of disputes. They are quite effective in that regard, with three decades of research consistently finding that between twenty to forty percent of inmate complaints are "remedied" in favor of inmate grievants. Denenberg & Denenberg, *Prisoner Grievance Procedures*, Corrections Magazine, January/February 1975 34, 36, 51; D. Dillingham and L. Singer, *Complaint Procedures in Prisons and Jails: An Examination of Recent Experiences* (National Institute of Corrections, U. S. Dept. of Justice, 1980) 34, Chart 2; G. Cole, R. Hansen, J. Silbert, *Alternative Dispute Resolutions for Prisoner Grievances* (National Institute of Corrections, U. S. Dept. of Justice, 1984) 34, 53; *Inmate Grievance Program: Annual Report, 1999*, *supra*, at 5; *FY 2000 Annual Report of the Inmate Grievance Procedure*, *supra*, at 5. This success is shown not only by the percentages, but also by the raw numbers. For example, the State of Washington resolved 12,812 complaints in favor of inmates in 1998, and New York's grievance system resolved 18,178 disputes in favor of prisoners in 1999, many of which

would have otherwise ended up in court. *Offender Grievance Program Annual Report 1998* (Washington Department of Corrections 1999) 9; *Inmate Grievance Programs: Annual Report 1999, supra*, at 2 and App. 4, p. 53. Indeed, the number of prisoner suits had significantly declined when resort to administrative remedies was required before the current version of § 1997e(a) was adopted, and that pattern accelerated after Congress further tightened § 1997e(a). Denenberg & Denenberg, *supra*, at 41; R. Doumar, *Prisoner Cases: Feeding the Monster in the Judicial Closet*, 14 St. Louis U. Pub. L. Rev. 21 (1994); L. Mecham, *Judicial Business of the United States Courts: 1997 Report* 131-32, Table C-2A (Administrative Office of the United States Courts 1998) (noting 31% decline in prison cases after PLRA enacted).

Moreover, those administrative resolutions are reached far more efficiently than they would be through litigation. While an average single-issue prisoner case takes 268 days to resolve in federal district court, most grievance systems resolve them in far less time. *Inmate Grievance System: Annual Report 1999, supra*, 5 (72 days, including all appeals); *A Guide to Certification of Inmate Grievance Procedures Pursuant to the Civil Rights and Institutionalized Persons Act* (Federal Bureau of Prisons, U. S. Dept. of Justice, 1995) (maximum acceptable time, including appeals, is 180 days); R. Hanson and H. Daley, *Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation* (Bureau of Justice Statistics, U. S. Dept. of Justice, 1995). They are also far more cost-effective. It takes an average of $1200 to $1500 to litigate a prisoner's grievance. But the average cost of resolving it administratively is $166. G. Cole and J. Silbert, *Alternative Dispute-Resolution Mechanisms for Prisoner Grievances*, 9 Justice System Journal 306, 308 n.1, and 315 (1981).

That efficiency benefits both inmates and the States. Administrative remedies save both time and money; they cost prisoners nothing, in contrast to mandatory filing fees in most state and all federal courts. *See, e.g.* 28 U.S.C. §§ 1915(a) and (b); Ohio Rev. Code § 2169.22. Further, while courts often lack both the resources and expertise to fully resolve legitimate complaints, grievance systems do in fact effect needed changes. Their conclusions are "more carefully obeyed than a court order because the Department could easily discipline subordinates who refuse to follow [their] directives. The federal court has no comparable enforcement tool." Denenberg & Denenberg, *supra*, at 40. *Accord*, J. Hepburn and J. Loue, *Resolution of Inmate Grievances as an Alternative to the Courts*, 35 Arbitration L. J. 11, 12 (1980).

Further, administrative dispute resolution relieves many operational burdens that inevitably result from litigation. At a minimum, lawsuits divert custody staff from normal duties to answer written discovery requests, to attend depositions and trials, and to transport prisoner-plaintiffs and their inmate witnesses to and from court. A. Champagne and K. Haas, *The Impact of* Johnson v. Avery *on Prison Administration*, 43 Tenn. L. Rev. 275, 291, Table 6, 293-295 (1976). More importantly, litigation leaves "staff fearful of becoming defendants in another lawsuit and thus reluctant to exercise discretion to solve festering and potentially serious problems. The emotional costs of litigation for staff and inmates may increase tensions, with ensuing management and security problems." G. Cole, R. Hanson, and J. Silbert, *supra*, at 8. Those costs are particularly galling because "many non-frivolous suits concern small monetary sums and the time devoted to them by [staff] is disproportionate to the amounts involved." *Id.* at 5.

Requiring exhaustion in all cases, regardless of the availability of damages, will not resolve all prisoner complaints. However, administrative remedies do resolve a significant portion of disputes, and they do so in a way that benefits individual prisoners and the system as a whole. Benefits accrue further when operational changes result from those resolutions, and those changes prevent other disputes from arising. Those results will occur without regard to the possibility of damage awards. Hence, those mechanisms provide a useful way to "prevent or obtain redress for a wrong" and have "sufficient power or force to achieve . . . end[s]." *Webster's Third New International Dictionary*, *supra*, at 1294, 150. Thus, those "remedies" are "available" for purposes of § 1997e(a), and they must be exhausted.

II. The Goals and Structure of the PLRA Show That Congress Did Not Intend To Expedite Damage Cases by Excusing Exhaustion.

Congressional intent is of "paramount interest" in any exhaustion inquiry. *McCarthy*, 503 U.S. at 144. Even when Congress has not specifically spoken, "appropriate deference to Congress's power to prescribe the basic procedural schemes under which a claim may be heard in a federal court requires fashioning exhaustion principles in a manner consistent with congressional intent and any applicable congressional scheme." *McCarthy*, 503 U.S. at 144. This Court has looked to legislative history and structure of relevant legislation to determine congressional intent in such a situation. *Id.*; *Patsy*, 457 U.S. at 501-502.

The history of the current § 1997e(a) strongly rebuts the Petitioner's premise that Congress sought to facilitate prisoners' damage suits by excusing exhaustion. To the contrary, Congress's primary focus was on providing the States with relief from the operational constraints and costs

that arose from unrestrained prisoner lawsuits. Indeed, other portions of that legislation provided very real disincentives to prisoner damage actions. Those indisputable facts demonstrate that the Petitioner's assumptions to the contrary are misplaced.

The current version of § 1997e(a) was enacted as part of the Prison Litigation Reform Act, P.L. No. 104-134 ("PLRA"). One of Congress's primary goals in enacting the PLRA was restoring the States' discretion to operate their prisons in accordance with penological imperatives rather than prisoners' desires. Congress was confronted with strong evidence that litigation was "hamstringing State and local officials in operating and managing their prison operations and managing their prison resources" and that "in many States, prisoners, their lawyers and unelected judges have replaced the people and their legislatures in controlling the character of prison life." *Prison Reform: Enhancing the Effectiveness of Incarceration*, Hearing before the Judiciary Committee of the United States Senate, 104th Cong., 2d. Sess. 26 (statement of William P. Barr), 5 (statement of Sen. Abraham)(1995); *see also id.* at 50 (statement Philadelphia District Attorney Lynne Abraham)(citing examples of "debates over the placement of flagpoles" and the "choice of art work at the prisons").

Congress was also concerned that a "nothing to lose attitude" among prisoners had led to an explosion of damage actions, costing the States unreasonable amounts of time and money. One witness explained that inmates had "nothing but time and if [they] 'hit[]' or win[] on only one in a hundred lawsuits, [they] feel[] it is worth it all." *Id.* at 111 (statement of O. Lane McCotter, Executive Director, Utah Dept. of Corrections). But when inmates played this lawsuit lottery, the State paid for the tickets, win or lose. *See id.*; 141 Cong. Rec. S 14417-14418 (daily ed., Sept. 27, 1995) (statement of

Sen. Dole) (an estimated $81,300,000 annually); 141 Cong. Rec. S 18296 (daily ed., Dec. 8 1995) (statement of Sen. Abraham). That was particularly aggravating because most claims involved relatively insignificant matters that could easily be resolved internally absent litigation.

Congress responded with legislation designed to "return [] control to competent administrators appointed to look out for society's interests as well as the legitimate needs of prisoners," and to provide relief from '[t]he huge costs imposed on state governments.'" 141 Cong. Rec. S 14627 (daily ed., Sept. 27, 1995) (statement of Sen. Hatch). Mandatory exhaustion of administrative remedies was part of that legislation and was intended to give corrections officials, rather than the judicial process, the first chance to correct problems in prison operations. A House sponsor noted that "[b]y returning these cases to [corrections officials] we will reduce the intrusion of the courts into prison administration." 141 Cong. Rec. H14105 (daily ed., Dec. 6, 1995)(statement of Rep. LoBiondo) Congress also recognized that most prisoner complaints, even where legitimate, were insubstantial enough that they could be resolved more effectively by administrative means. 141 Cong. Rec. S7527 (daily ed., May 25, 1995) (statement of Sen. Kyl). Against that background, Congress's mention of available remedies in § 1997e(a) could not have been meant to protect the pecuniary interests of prisoner-plaintiffs.

Indeed, Congress saw the difference between damages actions and other suits, but as several other PLRA provisions illustrate, it sought to curb damages claims, not fast-track them ahead of injunctive claims by uniquely exempting them from otherwise-mandatory exhaustion. Congress singled out damages claims when it structured 42 U.S.C. § 1997e(d)(2) in such a way as to impose a mathematical proportionality limitation on attorney fee

awards "whenever a money judgment is awarded that is not applicable in actions seeking only declaratory or injunctive relief." Congress also amended 42 U.S.C. § 1997e(e) to sharply limit damages for mental and emotional injury in constitutional cases. And in 28 U.S.C. § 1346(b)(1), Congress imposed similar limits on prisoner suits brought under the Federal Tort Claims Act. Finally, in uncodified PLRA §§ 807 and 808, Congress required that damage awards to prisoners be applied to outstanding restitution claims and that the victims of successful criminal claimants be notified before damages are paid. Taken together, those provisions illustrate that Congress did focus on damages claims—but it did so to limit such claims, not, as Petitioner would have it, to undercut these other structural limits by creating a unique damages-only exception to mandatory exhaustion.

CONCLUSION

The 50 *amici* States ask this Court to affirm the decision of the Third Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

January 10, 2001

The Honorable Betty D. Montgomery
Attorney General of the State of Ohio
30 East Broad Street, 17th Floor
Columbus, OH 43215

Re: Administrative Remedies for Ohio Prisoners

Dear Madam Attorney General:

I am writing, as Chief Inspector of the Ohio Department of Rehabilitation and Correction ("ODRC"), in response to your inquiries about Ohio's inmate grievance system.

ODRC provides a grievance system for inmates to raise concerns about any aspect of institutional life. In addition, it provides a number of more specific dispute resolution mechanisms to address problems such as use of force, disciplinary sanctions, the exclusion of disruptive publications, and religious programming. See Ohio Admin. Code §§ 5120-9-02 and 03 (use of force); 5120-9-06-09 (disciplinary proceedings); 5120-9-19 (publications); 5120-9-31 (general grievance procedure); and ODRC Policy 309.01 (religious matters).

ODRC maintains and encourages use of its grievance system for several reasons. The most important is to learn of operational problems that need to be addressed. In addition to evaluations and individual grievances, ODRC conducts

regular monthly and annual analysis of inmate grievances to determine problem areas and takes action to correct problems so identified. Examples of recent changes that have resulted from review of inmate grievances include:

- Changes to procedures for storing and transporting inmate property to minimize damage and loss
- Liberalized transfer criteria to facilitate visitation
- Increased access to over-the-counter drugs and food items through prison commissaries
- Improved medical and dental care through greater emphasis on preventative medicine
- Revising meal schedules in order to eliminate delays and resulting lock-downs
- Changes to procedures to reduce the danger posed to other inmates by contraband
- Increased hours of access to libraries

It is important to note that a very significant portion of inmate grievances are resolved in favor of inmates—24.1 percent in the last fiscal year. Moreover, 89 percent of those resolutions resulted in changes to operational practices.

Another key function is to resolve the disputes that inevitably arise in the prison setting. ODRC resolved 1,957 formal grievances in favor of inmates in fiscal 2000. Moreover, that figure significantly understates the actual number of disputes resolved, as it does not include those resolved through the informal complaint phase of the grievance process. The cumulative result is the resolution of well over 2,000 disputes that otherwise would have likely resulted in litigation.

Because of the importance of those functions, ODRC has devoted significant resources to its inmate grievance system. It maintains full-time Inspectors of Institutional Services who resolve the majority of inmate grievances at each of the 34 separate institutions. In addition, I and my four Assistant Chief Inspectors devote almost all of our time to grievance appeals and other grievance-related matters. In short, ODRC has made a significant investment in the inmate grievance system because it believes that that system significantly contributes to its ability to maintain safe, secure, and humane prisons.

Thank you for your time and attention to this matter. Please don't hesitate to contact me should you have further questions regarding these matters.

Very truly yours,

Cheryl Jorgensen-Martinez, Esq.
Chief Inspector

CJM:mcj